

Doctor Bowman, at the present time, is Director, Division of Psychiatry, New York City Hospitals, and Professor of Psychiatry at New York University. He was born in Topeka, Kansas, in 1888, and received his Medical Degree at the University of California in 1913. It is mainly his desire to return to California that has made it possible for us to secure his services at considerable sacrifice, both financial and otherwise, to himself.

Doctor Bowman is expected to report for duty at The Langley Porter Clinic on or about November 1, 1941.

The building will not have been completed by that time, but it is the best judgment of the Department of Institutions and of the authorities at the University that an early appointment be given him in order that he may have adequate opportunity for selecting personnel for the new institution and arranging all other details of organization.

We were quite happy when we secured appropriations for the erection of The Langley Porter Clinic, but it would have been quite possible for a first-class building to be constructed and equipped, and the whole enterprise to be a failure, through an improper selection of a person to take charge of the enterprise. The State of California has now been insured against such a mishap as that.

Very sincerely yours,

AARON J. ROSANOFF.

Concerning State Health Board Resolutions Regarding Diabetes.

To the Editor:—Attached resolution passed by the State Board of Health on September 13 will be of interest to you.

We are delighted with the interest shown by secretaries of county societies throughout the State in the diabetes program. Strange to say, the death rate from diabetes is already showing a slight reduction, though it is too early to hazard a guess as to whether it is the beginning of a downward trend or merely due to some artifact.

With best regards,

Sincerely yours,

(Signed) W. P. SHEPARD, M. D.

(COPY)

Excerpt from Minutes of September 13, 1941, Meeting of the California State Board of Public Health

WHEREAS, The aging of our population brings all degenerative diseases into sharp relief; and

WHEREAS, Diabetes, among such diseases, is particularly amenable to scientific methods now available for its control; and

WHEREAS, A campaign of education in diabetes control is being undertaken by the Metropolitan Life Insurance Company among doctors of medicine, health officers, and interested laymen; and

WHEREAS, The possibilities of life extension in diabetes, under modern methods of control, place it among those diseases that are, to a degree, preventable; now, therefore, be it

Resolved, That the California State Board of Public Health hereby gives its full endorsement to this campaign of education in diabetes and sanctions all efforts to extend it throughout the State.

MEDICAL JURISPRUDENCE†

By HARTLEY F. PEART, ESQ.

San Francisco

Malpractice: Time Within Which Suit May Be Commenced—Effect of Failure of Vasectomy to Accomplish Purpose

Ordinarily, a patient who believes that he has been injured in some manner by actions or omissions of his phy-

sician must commence action within one year from the date of the actions or omissions. If suit is filed after a year has passed, the complaint is usually subject to the defense of the statute of limitations.

There is one exception to the foregoing rule of law, namely: If the physician has concealed his alleged negligent actions or omissions, the one-year period does not commence to run until *after* the patient has discovered the true facts or until *after* he obtains such knowledge as would put an ordinary person on inquiry.

For a full discussion of the statute of limitations in malpractice actions and the exception to the one-year rule, see CALIFORNIA AND WESTERN MEDICINE, March, 1937, page 204, and February, 1939, page 163.

A very recent California case presents a new and very important phase of the general problems relating to the one-year period of limitation. The case is *Bathke vs. Rahn*, 46 A. C. A. 776, decided on September 3, 1941. The facts therein concerned were: Plaintiff, a married man, consulted the defendant physician to obtain professional aid in the avoidance of future pregnancies of his wife. His wife, after bearing four children, had suffered a complete physical and nervous breakdown and her health did not permit future pregnancies. The defendant physician advised a double vasectomy and stated that the operation would sterilize the plaintiff and would not injuriously affect his ability to carry on his occupation. Plaintiff was a traveling salesman. The operation was performed in October, 1938. More than a year later plaintiff commenced a malpractice action against the physician, claiming, first, that his wife had again become pregnant, and, second, that the vasectomy had caused a nervous disorder resulting in his inability to continue his occupation.

On these facts, the defendant physician urged the statute of limitations. The court disagreed with plaintiff's argument that the case was within the exception to the one-year rule. The court said that concealment was not present because once the plaintiff became nervous he was put upon notice that something was wrong and he should have made inquiry to determine whether or not the vasectomy caused his difficulties. In other words, the court applied the rule that means of knowledge is the equivalent of knowledge. Applying this rule, the case was not within the exception because the plaintiff was not without knowledge of the alleged malpractice.

One other phase of the case merits close attention. It will be recalled that the wife became pregnant about eleven months after the operation. The court indicated that if suit had been commenced for malpractice, based on the pregnancy alone rather than upon the husband's nervous disorder, a cause of action would have been stated. The court reasoned in the following manner: The physician warranted that vasectomy would sterilize the patient. The operation did not result in sterilization. This being so, it was a breach of promise or a breach of warranty when the wife again became pregnant. For this breach of warranty the physician could be held answerable in damages.

In order to avoid controversy and possible malpractice action by a patient upon whom a vasectomy has been performed, physicians should, prior to undertaking the operation, fully and clearly explain to the patient the present medical knowledge on the subject of vasectomy and the relative chance, whatever it may be, of failure of the operation to accomplish its purpose. If possible, the foregoing explanation should be made in the presence of another physician and in the presence of the spouse of the patient, particularly if the health of the spouse may be affected by the results of the operation. Under no circumstances should a patient be promised sterility as a certainty *unless* the physician is willing to take the consequences of a future pregnancy of the patient's wife.

† Editor's Note.—This department of CALIFORNIA AND WESTERN MEDICINE, presenting copy submitted by Hartley F. Peart, Esq., will contain excerpts from and syllabi of recent decisions and analyses of legal points and procedures of interest to the profession.